

SENATE BILL 280

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HB 622/01 - JUD

2003 Regular Session
3lr0369
CF 3lr0365

By: **Senator Jimeno**

Introduced and read first time: January 31, 2003

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Firearms Offenses - Project Exile**

3 FOR the purpose of allowing the State to appeal from a certain decision of the District
4 Court or to apply to the Court of Special Appeals for leave to appeal an order of
5 the circuit court setting the amount and conditions of bail claimed to be
6 insufficient before trial or after conviction; making it a felony on school property
7 to possess and intend to use a firearm, display a firearm in a threatening
8 manner, or attempt to use a firearm; requiring that a person convicted of a
9 certain felony be subject to a certain penalty; prohibiting a District Court
10 commissioner from authorizing the pretrial release of a defendant charged with
11 a certain crime; allowing the court or District Court commissioner to consider
12 including certain requirements as conditions of pretrial release; requiring a
13 judge to consider as a rebuttable presumption that a defendant charged with a
14 certain crime will flee and pose a danger to another person or the community;
15 altering certain criminal penalties for a person who is convicted of possessing a
16 regulated firearm after having been previously convicted of a crime of violence
17 or felony; and generally relating to the penalties and conditions for pretrial
18 release for certain firearms offenses.

19 BY repealing and reenacting, with amendments,
20 Article - Courts and Judicial Proceedings
21 Section 3-707 and 12-401(b)
22 Annotated Code of Maryland
23 (2002 Replacement Volume)

24 BY repealing and reenacting, with amendments,
25 Article - Criminal Law
26 Section 4-102
27 Annotated Code of Maryland
28 (2002 Volume)

29 BY repealing and reenacting, with amendments,
30 Article - Criminal Procedure
31 Section 5-202(c)

1 Annotated Code of Maryland
2 (2001 Volume and 2002 Supplement)

3 BY repealing
4 Article - Public Safety
5 Section 5-133(c)
6 Annotated Code of Maryland
7 (As enacted by Chapter ____ (S.B. 1) of the Acts of the General Assembly of 2003)

8 BY adding to
9 Article - Public Safety
10 Section 5-133(c)
11 Annotated Code of Maryland
12 (As enacted by Chapter ____ (S.B. 1) of the Acts of the General Assembly of 2003)

13 Preamble

14 WHEREAS, Project Exile is a legislative initiative designed to make gun
15 carrying criminals face immediate prosecution, stiff mandatory prison sentences, and
16 reduced opportunities for prison release -- in effect to "exile" criminals to prison for
17 at least 5 years; and

18 WHEREAS, The goal of Project Exile is to reduce the incidence of gun violence
19 and the firearm "carry rate" -- the frequency with which persons arrested for felonies
20 are found to be carrying firearms; and

21 WHEREAS, Project Exile has proven to be a highly successful program
22 operating in Richmond, Virginia, involving federal, state, and local law enforcement
23 agencies, resulting in greatly reduced homicide, armed robbery, and carry rates; and

24 WHEREAS, It would benefit the residents of Maryland to design a Project Exile
25 program for this State; now, therefore,

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
27 MARYLAND, That the Laws of Maryland read as follows:

28 **Article - Courts and Judicial Proceedings**

29 3-707.

30 (a) If a judge refuses to issue a writ of habeas corpus sought for the purpose of
31 determining the right to bail, or if a judge sets bail claimed to be excessive prior to
32 trial or after conviction, but prior to final judgment, a petitioner may apply to the
33 Court of Special Appeals for leave to appeal from the refusal.

34 (b) (1) A petitioner shall file the application for leave to appeal within ten
35 days after the denial or grant of habeas corpus relief stating briefly why the order of
36 the lower court should be reversed or modified.

1 (2) The record on the application for leave to appeal shall contain a copy
 2 of the petition for habeas corpus, the State's answer, if any, the order of the court, and
 3 the memorandum of reasons issued by the judge.

4 (3) If the Court grants the application, it may order the preparation of a
 5 transcript of any proceedings related to the habeas corpus petition.

6 (c) (1) The Court of Special Appeals may grant or deny the application for
 7 leave to appeal. If the Court grants the application, it may affirm, reverse, or modify
 8 the order of the lower court granting or denying the relief sought by the writ.

9 (2) If the Court determines that the lower court was wrong in refusing to
 10 admit to bail or that the bail set is not appropriate, it may determine the proper
 11 amount of bail. This determination is binding on the lower court, unless a change of
 12 circumstances warrants a different decision.

13 (D) THE STATE MAY APPLY TO THE COURT OF SPECIAL APPEALS FOR LEAVE
 14 TO APPEAL AN ORDER OF THE CIRCUIT COURT SETTING THE AMOUNT AND
 15 CONDITIONS OF BAIL CLAIMED TO BE INSUFFICIENT BEFORE TRIAL OR AFTER
 16 CONVICTION.

17 12-401.

18 (b) In a criminal case:

19 (1) The State may appeal from [a]:

20 (I) A DECISION OF THE DISTRICT COURT SETTING THE AMOUNT
 21 AND CONDITIONS OF BAIL; OR

22 (II) A final judgment entered in the District Court:

23 [(i)] 1. If the State alleges that the trial judge failed to impose the
 24 sentence specifically mandated by the Code; or

25 [(ii)] 2. Granting a motion to dismiss, or quashing or dismissing a
 26 charging document.

27 (2) The defendant may appeal even from a final judgment entered in the
 28 District Court though imposition or execution of sentence has been suspended.

29 **Article - Criminal Law**

30 4-102.

31 (a) This section does not apply to:

32 (1) a law enforcement officer in the regular course of the officer's duty;

33 (2) a person hired by a county board of education specifically for the
 34 purpose of guarding public school property;

1 (3) a person engaged in organized shooting activity for educational
2 purposes; or

3 (4) a person who, with a written invitation from the school principal,
4 displays or engages in a historical demonstration using a weapon or a replica of a
5 weapon for educational purposes.

6 (b) (1) A person may not carry or possess a firearm, knife, or deadly weapon
7 of any kind on public school property.

8 (2) A PERSON ON PUBLIC SCHOOL PROPERTY MAY NOT POSSESS AND
9 INTEND TO USE A FIREARM, DISPLAY A FIREARM IN A THREATENING MANNER, OR
10 ATTEMPT TO USE A FIREARM.

11 (c) (1) Except as provided in [paragraph] PARAGRAPHS (2) AND (3) of this
12 subsection, a person who violates this section is guilty of a misdemeanor and on
13 conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding
14 \$1,000 or both.

15 (2) A person who is convicted of carrying or possessing a handgun in
16 violation of this section shall be sentenced under Subtitle 2 of this title.

17 (3) (I) A PERSON WHO VIOLATES SUBSECTION (B)(2) OF THIS SECTION
18 IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR
19 NOT LESS THAN 5 YEARS AND NOT EXCEEDING 20 YEARS.

20 (II) THE COURT SHALL IMPOSE A MINIMUM SENTENCE OF 5 YEARS.

21 (III) THE COURT MAY NOT SUSPEND ANY PART OF A MANDATORY
22 MINIMUM SENTENCE.

23 (IV) THE SENTENCE SHALL TO BE SERVED CONSECUTIVELY TO ANY
24 OTHER SENTENCE.

25 (V) EXCEPT AS OTHERWISE PROVIDED IN § 4-305 OF THE
26 CORRECTIONAL SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE IN
27 LESS THAN 5 YEARS.

28 **Article - Criminal Procedure**

29 5-202.

30 (c) (1) A District Court commissioner may not authorize the pretrial release
31 of a defendant charged with a crime of violence [if the defendant has been previously
32 convicted:

33 (i) in this State of a crime of violence; or

34 (ii) in any other jurisdiction of a crime that would be a crime of
35 violence if committed in this State] OR POSSESSION OF A FIREARM IN VIOLATION OF

1 § 4-102 OR § 5-621(B) OR (C) OF THE CRIMINAL LAW ARTICLE OR § 5-133(C) OF THE
2 PUBLIC SAFETY ARTICLE.

3 (2) (i) A judge may authorize the pretrial release of a defendant
4 described in paragraph (1) of this subsection on:

5 1. suitable bail;

6 2. any other conditions that will reasonably ensure that the
7 defendant will not flee or pose a danger to another person or the community; or

8 3. both bail and other conditions described under item 2 of
9 this subparagraph.

10 (ii) When a defendant described in paragraph (1) of this subsection
11 is presented to the court under Maryland Rule 4-216(g), the judge shall order the
12 continued detention of the defendant if the judge determines that neither suitable
13 bail nor any condition or combination of conditions will reasonably ensure that the
14 defendant will not flee or pose a danger to another person or the community before
15 the trial.

16 (3) There is a rebuttable presumption that a defendant described in
17 paragraph (1) of this subsection will flee and pose a danger to another person or the
18 community.

19 (4) IN ADDITION TO THE CONDITIONS OF PRETRIAL RELEASE SPECIFIED
20 ELSEWHERE IN THIS SECTION, THE COURT OR DISTRICT COURT COMMISSIONER MAY
21 CONSIDER INCLUDING AS A CONDITION OF PRETRIAL RELEASE A REQUIREMENT
22 THAT THE DEFENDANT:

23 (I) MAINTAIN EMPLOYMENT OR, IF UNEMPLOYED, ACTIVELY SEEK
24 EMPLOYMENT;

25 (II) MAINTAIN OR BEGIN AN EDUCATIONAL PROGRAM;

26 (III) AVOID ALL CONTACT WITH AN ALLEGED VICTIM OF THE CRIME
27 AND WITH ANY POTENTIAL WITNESS WHO MAY TESTIFY CONCERNING THE CRIME;

28 (IV) COMPLY WITH A SPECIFIED CURFEW;

29 (V) REFRAIN FROM POSSESSING A FIREARM, DESTRUCTIVE
30 DEVICE, OR OTHER DANGEROUS WEAPON;

31 (VI) REFRAIN FROM USE OF ALCOHOL OR CONTROLLED
32 DANGEROUS SUBSTANCES; OR

33 (VII) SUBMIT TO DRUG OR ALCOHOL TESTING UNTIL THE
34 DISPOSITION OF THE DEFENDANT'S CASE.

Article - Public Safety

1 5-133.

2 [(c) (1) A person may not possess a regulated firearm if the person was
3 previously convicted of:

4 (i) a crime of violence;

5 (ii) a violation of § 5-602, § 5-603, § 5-604, § 5-605, § 5-606, §
6 5-607, § 5-608, § 5-609, § 5-612, § 5-613, or § 5-614 of the Criminal Law Article; or

7 (iii) any other violation classified as a felony in the State.

8 (2) A person who violates this subsection is guilty of a felony and on
9 conviction is subject to imprisonment for not less than 5 years, no part of which may
10 be suspended.

11 (3) A person sentenced under paragraph (1) of this subsection may not be
12 eligible for parole.

13 (4) Each violation of this subsection is a separate crime.]

14 (C) (1) (I) A PERSON MAY NOT POSSESS A REGULATED FIREARM IF THE
15 PERSON WAS PREVIOUSLY CONVICTED OF A CRIME OF VIOLENCE.

16 (II) A PERSON WHO VIOLATES THIS PARAGRAPH IS GUILTY OF A
17 FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 5
18 YEARS AND NOT EXCEEDING 20 YEARS, NO PART OF WHICH MAY BE SUSPENDED.

19 (III) IT IS MANDATORY ON THE COURT TO IMPOSE NOT LESS THAN
20 THE MINIMUM SENTENCE OF 5 YEARS.

21 (IV) THE SENTENCE IMPOSED UNDER THIS PARAGRAPH IS TO BE
22 SERVED CONSECUTIVELY TO ANY OTHER SENTENCE.

23 (V) EXCEPT AS OTHERWISE PROVIDED IN § 4-305 OF THE
24 CORRECTIONAL SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE IN
25 LESS THAN 5 YEARS.

26 (2) (I) A PERSON MAY NOT POSSESS A REGULATED FIREARM IF THE
27 PERSON WAS PREVIOUSLY CONVICTED OF ANY VIOLATION OTHER THAN A CRIME OF
28 VIOLENCE THAT IS CLASSIFIED AS A FELONY IN THE STATE.

29 (II) A PERSON WHO VIOLATES THIS PARAGRAPH IS GUILTY OF A
30 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS
31 THAN 2 YEARS AND NOT EXCEEDING 10 YEARS, NO PART OF WHICH MAY BE
32 SUSPENDED.

33 (III) IT IS MANDATORY ON THE COURT TO IMPOSE NOT LESS THAN
34 THE MINIMUM SENTENCE OF 2 YEARS.

1 (IV) THE SENTENCE IMPOSED UNDER THIS PARAGRAPH IS TO BE
2 SERVED CONSECUTIVELY TO ANY OTHER SENTENCE.

3 (V) EXCEPT AS OTHERWISE PROVIDED IN § 4-305 OF THE
4 CORRECTIONAL SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE IN
5 LESS THAN 2 YEARS.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2003.